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Arso Radio Corporation
P.O. Box 487
Caguas, PR 00726

In re: WRIO(FM), Ponce, PR
Facility ID# 20591
Arso Radio Corporation
BPH-20040623AAC
Petition for Reconsideration

Dear Applicant:

This letter is in reference to: (1) the above-captioned application dismissed on August 18, 2006 and (2) the September 15, 2006 Petition for Reconsideration filed by Arso Radio Corporation ("Arso"). The applicant requests reconsideration of the staff's August 18, 2006 dismissal of the above-captioned application.

Petition for Reconsideration. The application filed on June 23, 2004 was in violation of §73.207 with respect to WXYX(FM), Bayamón, PR and a waiver was requested. By letter dated August 18, 2006, the staff informed Arso that it failed to fully address the three criteria for spacing waivers. Thus, the waiver request was denied and the application was dismissed. In the September 15, 2006 Petition for Reconsideration, Arso reiterates its initial waiver request and presents one new argument. Arso claims that the three sites referenced in the staff letter are not suitable because of height restriction and structural stability.

Discussion. The response to the staff letter submitted in the petition for reconsideration does not explain why the applicant failed to include an exhibit in its initial waiver request demonstrating compliance with the criteria for spacing waivers. Moreover, the applicant was aware of these existing sites by the time the waiver was initially requested and did not address them.¹ Therefore, the petition for reconsideration is subject to denial. Nevertheless, we reviewed the additional information submitted in the petition and determined that it too is insufficient to meet the three criteria. Specifically, the applicant's waiver request provided no explanation or details that alternative, non-short spaced sites are unavailable and that the proposed site is the least short-spaced of all suitable sites. Finally, the applicant failed to provide details on other sites (built and un-built) considered, details as to what fully spaced and lesser short-spaced sites were studied, and why those sites are unsuitable. The scope of the sites considered must extend beyond the three existing towers specified in the letter.

¹ Although Arso states that they did explore other alternatives, they did not provide specific information about which ones were pursued and why they were not feasible.

In order to be favorably considered, a petition for reconsideration must establish that the action taken by the Commission for which reconsideration is sought involved findings of fact and/or conclusions of law which were erroneous. See 47 CFR § 1.106(d)(2). Where the petition for reconsideration relies on facts not previously presented it may be granted only in limited circumstances, including changed circumstances and facts which could not, through exercise of ordinary diligence, have been learned earlier. Arso's petition does not establish that such errors were made and does not provide adequate justification for failure to submit this new argument in its earlier waiver request.

Conclusion. Accordingly, Arso's September 15, 2006 Petition for Reconsideration IS HEREBY DENIED. This action is taken pursuant to 47 CFR § 0.283.

Sincerely,

A handwritten signature in dark ink, appearing to read "Rodolfo F. Bonacci", with a stylized flourish at the end.

Rodolfo F. Bonacci
Assistant Chief
Audio Division
Media Bureau

cc: Anthony T. Lepore, Esq.
Jefferson G. Brock